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Attorneys for Defendants
New York Bagels Eatery Inc.
 (D/B/A NY Bagels & Café) and
 Pyong Su Son

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----	X	
BERTIN DOMINGUEZ, ET AL ,	:	
	:	<u>ECF CASE</u>
Plaintiffs,	:	
	:	20 CIV 09427 (GHW)
- against -	:	
	:	ANSWER
NEW YORK BAGELS EATERY INC. (D/B/A NY	:	
BAGELS & CAFÉ), ET AL	:	
	:	
Defendants.	::	
-----	X	

Defendants New York Bagels Eatery Inc. (d/b/a NY Bagels & Café) and Pyong Su Son, (hereinafter: “Represented Defendants”), by their attorneys, Phillips Nizer LLP, for its answer to the Complaint:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1
2. Deny the allegations of paragraph 2, except admit as to the period on or after July 1, 2018 to the present.
3. Deny the allegations of paragraph 3.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, except admit that plaintiffs were employed in various job categories at the deli on or after July 1, 2018.
5. Deny the allegations in paragraph 5.
6. Deny the allegations in paragraph 6.
7. Deny the allegations in paragraph 7.
8. Deny the allegations in paragraph 8.
9. Deny the allegations in paragraph 9.
10. Deny the allegations in paragraph 10.
11. Deny the allegations in paragraph 11.
12. Deny the allegations in paragraph 12.
13. Deny the allegations in paragraph 13.
14. Deny the allegations in paragraph 14.
15. Deny the allegations in paragraph 15.
16. Paragraph 16 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 16.
17. Paragraph 17 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 17.

18. Paragraph 18 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 18.
19. Paragraph 19 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 19.
20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.
21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, except admit as to the period on or after July 1, 2018.
22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.
23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23, except admit as to the period on or after July 1, 2018.
24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.
25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, except admit as to the period on or after July 1, 2018.
26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.
27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, except admit as to the period on or after July 1, 2018.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.
29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, except admit as to the period on or after July 1, 2018.
30. Deny, except admit the allegations in paragraph 30 with respect to the time period from on or after July 1, 2018.
31. Admit the allegations in paragraph 31.
32. Deny the allegations in paragraph 32.
33. Deny the allegations in paragraph 33.
34. Deny the allegations in paragraph 34.
35. Admit the allegations in paragraph 35.
36. Deny the allegations in paragraph 36.
37. Deny the allegations in paragraph 37.
38. Deny the allegations of paragraph 38.
39. Deny the allegations in paragraph 39.
40. Deny the allegations in paragraph 40.
41. Deny the allegations in paragraph 41 including (a) through (h).

42. Deny the allegations in paragraph 42, except admit as to the period on or after July 1, 2018.

43. Deny the allegations in paragraph 43, except admit as to the period on or after January 1, 2019.

44. Deny the allegations in paragraph 44.

45. Deny the allegations in paragraph 45.

46. This allegation requires no answer, but to the extent it does, deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. Deny the allegations in paragraph 47, except admit as to the period on or after July 1, 2018.

48. Deny the allegations in paragraph 48, except admit as to the period on or after July 1, 2018 to April 2020 as a delivery worker and thereafter as a bagel man.

49. Deny the allegations in paragraph 49.

50. Deny the allegations in paragraph 50.

51. Deny the allegations in paragraph 51.

52. Deny the allegations in paragraph 52.

53. Deny the allegations in paragraph 53.

54. Deny the allegations in paragraph 54.

55. Deny the allegations in paragraph 55.

56. Deny the allegations in paragraph 56.

57. Deny the allegations in paragraph 57.

58. Deny the allegations in paragraph 58.

59. Deny the allegations in paragraph 59.

60. Admit the allegations in paragraph 60.

61. Deny the allegations in paragraph 61.

62. Deny the allegations in paragraph 62.

63. Deny the allegations in paragraph 63.

64. Deny the allegations in paragraph 64.

65. Deny the allegations in paragraph 65.

66. Deny the allegations in paragraph 66.

67. Deny the allegations in paragraph 67.

68. Deny the allegations in paragraph 68.

69. Deny the allegations in paragraph 69.

70. Deny the allegations in paragraph 70.

71. Deny the allegations in paragraph 71.

72. Deny the allegations in paragraph 72 .

73. Deny the allegations in paragraph 73.

74. Deny the allegations in paragraph 74.

75. Deny the allegations in paragraph 75.

76. Deny the allegations in paragraph 76.

77. Deny the allegations in paragraph 77, except admit as to the period on or after
July 1, 2018.

78. Deny the allegations in paragraph 78.

79. Deny the allegations in paragraph 79.

80. Deny the allegations in paragraph 80.

81. Deny the allegations in paragraph 81.

82. Deny the allegations in paragraph 82.

83. Deny the allegations in paragraph 83.

84. Deny the allegations in paragraph 84.

85. Deny the allegations in paragraph 85.

86. Admit the allegations in paragraph 86.

87. Deny the allegations in paragraph 87.

88. Deny the allegations in paragraph 88.

89. Deny the allegations in paragraph 89.

90. Deny the allegations in paragraph 90.

91. Deny the allegations in paragraph 91.

92. Deny the allegations in paragraph 92.

93. Deny the allegations in paragraph 93.

94. Deny the allegations in paragraph 94.

95. Deny the allegations in paragraph 95.

96. Deny the allegations in paragraph 96, except admit as to the period on or after
July 1, 2018.

97. Deny the allegations in paragraph 97.

98. Deny the allegations in paragraph 98.

99. Deny the allegations in paragraph 99.

100. Deny the allegations in paragraph 100.

101. Deny the allegations in paragraph 101.

102. Admit the allegations in paragraph 102.

- 103. Deny the allegations in paragraph 103.
- 104. Deny the allegations in paragraph 104.
- 105. Deny the allegations in paragraph 105.
- 106. Deny the allegations in paragraph 106.
- 107. Deny the allegations in paragraph 107.
- 108. Deny the allegations in paragraph 108.
- 109. Deny the allegations in paragraph 109.
- 110. Deny the allegations in paragraph 110.
- 111. Deny the allegations in paragraph 111, except admit as to the period on or after July 1, 2018.
- 112. Deny the allegations in paragraph 112.
- 113. Deny the allegations in paragraph 113.
- 114. Deny the allegations in paragraph 114.
- 115. Deny the allegations in paragraph 115.
- 116. Deny the allegations in paragraph 116.
- 117. Deny the allegations in paragraph 117.
- 118. Deny the allegations in paragraph 118.

- 119. Deny the allegations in paragraph 119.
- 120. Admit the allegations in paragraph 120.
- 121. Deny the allegations in paragraph 121.
- 122. Deny the allegations in paragraph 122.
- 123. Deny the allegations in paragraph 123.
- 124. Deny the allegations in paragraph 124.
- 125. Deny the allegations in paragraph 125.
- 126. Deny the allegations in paragraph 126.
- 127. Deny the allegations in paragraph 127.
- 128. Deny the allegations in paragraph 128.
- 129. Deny the allegations in paragraph 129.
- 130. Deny the allegations in paragraph 130, except admit as to the period on or after July 1, 2018.
- 131. Deny the allegations in paragraph 131.
- 132. Deny the allegations in paragraph 132.
- 133. Deny the allegations in paragraph 133.
- 134. Deny the allegations in paragraph 134.

- 135. Deny the allegations in paragraph 135.
- 136. Deny the allegations in paragraph 136.
- 137. Admit the allegations in paragraph 137.
- 138. Deny the allegations in paragraph 138.
- 139. Deny the allegations in paragraph 139.
- 140. Deny the allegations in paragraph 140.
- 141. Deny the allegations in paragraph 141.
- 142. Deny the allegations in paragraph 142.
- 143. Deny the allegations in paragraph 143.
- 144. Deny the allegations in paragraph 144.
- 145. Deny the allegations in paragraph 145.
- 146. Deny the allegations in paragraph 146.
- 147. Deny the allegations in paragraph 147.
- 148. Deny the allegations in paragraph 148.
- 149. Deny the allegations in paragraph 149.
- 150. Deny the allegations in paragraph 150.
- 151. Deny the allegations in paragraph 151.

152. Deny the allegations in paragraph 152.

153. Deny the allegations in paragraph 153.

154. Deny the allegations in paragraph 154.

155. Deny the allegations in paragraph 155.

156. Paragraph 156 sets forth legal assertions/conclusions that require no answer;
to the extent an answer is required, deny the allegations in paragraph 156

157. Deny the allegations in paragraph 157.

158. Deny the allegations in paragraph 158.

159. Deny the allegations in paragraph 159.

160. Deny the allegations in paragraph 160.

161. Deny the allegations in paragraph 161.

162. Deny the allegations in paragraph 162.

163. Paragraph 163 sets forth legal assertions/conclusions that require no answer;
to the extent an answer is required, deny the allegations in paragraph 163.

164. Deny the allegations in paragraph 164.

165. Deny the allegations in paragraph 165.

166. Admit the allegations in paragraph 166.

167. Deny the allegations in paragraph 167.

168. Deny the allegations in paragraph 168.

169. Deny the allegations in paragraph 169.

170. Deny the allegations in paragraph 170.

171. Deny the allegations in paragraph 171.

172. Deny the allegations in paragraph 172.

173. Paragraph 173 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 173.

174. Paragraph 174 sets forth legal assertions/conclusions that require no answer; to the extent an answer is required, deny the allegations in paragraph 174.

175. Deny the allegations in paragraph 175.

176. Repeat and reallege all paragraphs above as though fully set forth herein.

177. Deny the allegations in paragraph 177.

178. Deny the allegations in paragraph 178.

179. Deny the allegations in paragraph 179.

180. Deny the allegations in paragraph 180.

181. Deny the allegations in paragraph 181.

- 182. Deny the allegations in paragraph 182.
- 183. Repeat and reallege all paragraphs above as though fully set forth herein.
- 184. Deny the allegations in paragraph 184.
- 185. Deny the allegations in paragraph 185.
- 186. Deny the allegations in paragraph 186.
- 187. Repeat and reallege all paragraphs above as though fully set forth herein.
- 188. Deny the allegations in paragraph 188.
- 189. Deny the allegations in paragraph 189.
- 190. Deny the allegations in paragraph 190.
- 191. Deny the allegations in paragraph 191.
- 192. Repeat and reallege all paragraphs above as though fully set forth herein.
- 193. Deny the allegations in paragraph 193.
- 194. Deny the allegations in paragraph 194.
- 195. Deny the allegations in paragraph 195.
- 196. Repeat and reallege all paragraphs above as though fully set forth herein.
- 197. Deny the allegations in paragraph 197.
- 198. Deny the allegations in paragraph 198.

- 199. Deny the allegations in paragraph 199.
- 200. Repeat and reallege all paragraphs above as though fully set forth herein.
- 201. Deny the allegations in paragraph 201.
- 202. Deny the allegations in paragraph 202.
- 203. Repeat and reallege all paragraphs above as though fully set forth herein.
- 204. Deny the allegations in paragraph 204.
- 205. Deny the allegations in paragraph 205.
- 206. Repeat and reallege all paragraphs above as though fully set forth herein.
- 207. Deny the allegations in paragraph 207.
- 208. Deny the allegations in paragraph 208.
- 209. Repeat and reallege all paragraphs above as though fully set forth herein.
- 210. Deny the allegations in paragraph 210.
- 211. Paragraph 211 sets forth legal assertions/conclusions that require no answer;
to the extent an answer is required, deny the allegations in paragraph 211.
- 212. Deny the allegations in paragraph 212.
- 213. Deny the allegations in paragraph 213.
- 214. Repeat and reallege all paragraphs above as though fully set forth herein.

- 215. Deny the allegations in paragraph 215.
- 216. Deny the allegations in paragraph 216.
- 217. Deny the allegations in paragraph 217.
- 218. Deny the allegations in paragraph 218.
- 219. Repeat and reallege all paragraphs above as though fully set forth herein.
- 220. Deny the allegations in paragraph 220.
- 221. Deny the allegations in paragraph 221.

PRAYER FOR RELIEF

- 222. Represented Defendants assert that Plaintiffs are not entitled to any of the relief requested in the Complaint.

FIRST DEFENSE

- 223. The defendant New York Bagels Eatery Inc. did not come into existence and did not employ any of the plaintiffs before, at the earliest, July 1, 2018.

SECOND DEFENSE

224. The Defendant Pyong, Su Son did not own, operate, control, have any interest in or work at New York Bagels & Café at any time during the statute of limitations period until on or after July 1, 2018.

THIRD DEFENSE

225. The defendant Pyong, Su Son was not employed by, and did not own, operate or control in any way the defendant NYU Bagels & Café, Inc. or the wages, hours or work of its employees during the limitations period.

FOURTH DEFENSE

226. Represented Defendants have acted in good faith conformity with and in reliance on written administrative regulations, orders, rulings, approvals, and interpretations of the Administrator of the Wage and Hour Division of the U.S. Department of Labor, or administrative practices or enforcement policies of said Administrator and, accordingly, the action is barred under the Portal-to-Portal Act, 29 U.S.C. § 259.

FIFTH DEFENSE

227. Represented Defendants have made payment to plaintiffs of all sums due under the FLSA and the NYLL and the regulations and rulings thereunder.

SIXTH DEFENSE

228. Represented Defendants did not willfully violate federal or state law.

SEVENTH DEFENSE

229. Represented Defendants compensated plaintiffs in good faith and with a reasonable basis to believe they were properly in compliance with the FLSA and NYLL. Therefore, in the event plaintiffs are due unpaid wages or unpaid overtime compensation, plaintiffs are not entitled to liquidated damages.

EIGHTH DEFENSE

230. The Complaint is barred in whole or in part by the statutes of limitations.

NINTH DEFENSE

231. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted or for which the relief or recovery sought may be awarded.

WHEREFORE, Represented Defendants demand judgment dismissing the Complaint with prejudice, awarding it the costs of this action, and granting such other relief as the Court may deem just and proper.

New York, New York
March 3, 2021

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